

Serial No. 10/024,988
Amendment C

REMARKS

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1, 3–11, 14–15, 18–21, and 23–33 are presented for the Examiner's consideration. Claim 2 has been canceled. Claims 12, 13, 16, 17, and 22 were cancelled in a previous response. Claims 1, 15, 20, and 33 are currently amended. Support for these amendments can be found at least at page 4: lines 8–18, page 29: lines 20–22, and Figure 5. No new matter has been added.

Applicants thank the Examiner for participating in a telephone interview on June 15, 2004. Applicants have carefully considered the Examiner's comments in preparation for this response and amendment.

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ARGUMENTS

Claims 1, 2, 15, 18–21, 23–32 stand rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Baird*. Applicants respectfully traverse this rejection as it may relate to the presently presented claims.

Applicants have cancelled claim 2 rendering this rejection moot as to this claim.

Claims 1, 15, and 20 have been amended to clarify that the precursor web is extendable under force to a second dimension without permanent deformation of the precursor web. Additionally, the claims have been amended to clarify that the elastic material is applied in an active state to a generally flat precursor web. Specifically, this means that no subsequent treatment, such as heat activation, is required to induce elasticity.

Baird relates to composite structures requiring a prestretched and tensioned elastomeric member fixed by a rigidifying member and attached to an article. The rigidifying member of *Baird* can be manipulated to elastically shift the article. To be a proper anticipating reference, each and every claim limitation must be present. *Baird* does not teach or suggest the use of an **active elastic material** applied in an **untensioned state** as required by the presently presented claims 1, 15, and 20. Therefore, claims 1, 15, and 20 are novel and nonobvious over *Baird*.

Claims 18, 19, and 28 depend from claim 15 and are therefore novel and nonobvious over *Baird* for at least the same reasons as claim 15 stated above. Claims 21, 23–32 depend from claim 1 and are therefore novel and nonobvious over *Baird* for at least the same reasons as claim 1 stated above.

Thus, Applicants submit that claims 1, 15, 18–21, and 23–32 patentably distinguish over *Baird* for at least the reasons discussed above. Consequently, Applicants request that the Examiner withdraw the rejection under 35 U.S.C. § 102(b) and § 103(a).

Claim 33 stands rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Reiter*. Applicants respectfully traverse this rejection as it may relate to the presently presented claim.

Claim 33 has been amended to clarify that the precursor web is extendable under force to a second dimension without permanent deformation of the precursor web. Additionally, the claims have been amended to clarify that the elastic material is applied in an active state to a generally flat precursor web. Specifically, this means that no subsequent treatment, such as heat activation, is required to induce elasticity.

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As stated in the Office Action, "Reiter suggested that it was known ... to apply an elastic which is heat unstable and molecularly oriented to a backsheet of a disposable diaper in an untensioned state...." However, *Reiter* does not teach nor suggest the use of an **active elastic material** applied in an untensioned state as required by the presently presented claim 33 and therefore neither anticipates nor makes obvious claim 33 as presently presented because each and every element of the claimed invention is not present in the reference. Additionally, although the backsheet materials employed in *Reiter* included polyethylene films which were of a thickness of .04 mm, as noted by the Examiner, there is no teaching or suggestion that such materials were "extendable under force to a second dimension without permanent deformation" as required by the presently presented claim 33. Applicants therefore submit that the currently amended claim 33 is patentably distinguished over *Reiter* for at least the reasons stated herein. Consequently, the Examiner's rejection under 35 U.S.C. § 102(b) and § 103(a) should be withdrawn.

Claims 1–11, 15, 18–21, 23–33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baird in view of either one of Reiter, Lancaster, or EP 650,714. Applicants respectfully traverse this rejection as it may relate to the presently presented claim.

Baird fails to teach or suggest affixing an untensioned and active elastic material to a generally flat precursor web that is extendable under force to a second dimension without permanent deformation as discussed previously. The addition of *Reiter*, *Lancaster*, and *EP 650,714* does not cure these defects. *Reiter* is discussed above and need not be discussed again here. *Lancaster* teaches the use of a heat shrinkable elastomeric material to provide an elasticized waist on a diaper. Therefore *Lancaster* does not cure the defects of *Baird*. *EP 0 650 714* relates to the application of an elastic composite member to an absorbent article. The elastic composite member of *EP 0 650 714* is activated just before attachment or after attachment. *EP 0 650 714* explains that, "[w]ith activated it is meant that a physical deformation is applied to the unextensible layer, to impart a permanent elongation to this layer." Col. 3; Lines 52–54. Applicants therefore submit that the currently amended claims 1, 15, 20, 33 and those claims depending therefrom are patentably distinguished over the documents cited for at least the reasons discussed herein. Consequently, the Examiner's rejection under 35 U.S.C. § 103(a) should be withdrawn.

Claim 14 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Baird in view of either one of Reiter, Lancaster, or EP 650,714 further taken with Roessler or Wideman. Applicants respectfully traverse this rejection as it may relate to the presently presented claim.

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Baird fails to teach or suggest affixing an untensioned and active elastic material to a generally flat precursor web that is extendable under force to a second dimension without permanent deformation as discussed previously. Neither *Reiter*, *Lancaster*, nor *EP 650,714* cures these defects even further taken with *Roessler* or *Wideman*. *Reiter*, *Lancaster*, and *EP 650,714* are discussed above and need not be discussed again here. *Roessler* relates to a method and apparatus for providing a set of elastics which are arranged in a staggered overlapping relation. *Wideman* relates to a bulked web composite comprising a differentially tensioned reticulated web of elastic material bonded to at least one gatherable web whereby, upon release of the tensioning forces, the gatherable web are gathered with different degrees of bulking in different areas due to the different tension levels. Neither *Wideman* nor *Roessler* teach or suggest affixing an untensioned and active elastic material to a generally flat precursor web that is extendable under force to a second dimension without permanent deformation and therefore each and every claim limitation is not met. Applicants therefore submit that Claim 14 is patentably distinguished over the documents cited, for at least the reasons discussed herein. Consequently, the Examiner's rejections under 35 U.S.C. § 103(a) should be withdrawn.

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CONCLUSION

For at least any or all of the reasons stated herein, the foregoing rejections should be withdrawn. Consequently, Applicants submit that the Application, including Claims 1, 3-11, 14-15, 18-21, and 23-33, is in condition for allowance and that action is earnestly solicited.

In the event the Examiner has any questions concerning this Response, the Examiner is invited to contact Attorney for Applicants at the telephone number listed below.


The Commissioner is hereby authorized to charge any fee(s) which may be required for this Response to Kimberly-Clark Worldwide, Inc., Deposit Account No. 11-0875

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Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I, Cynthia M. Trudell, hereby certify that on July 19, 2004 this document is being facsimile transmitted to the United States Patent and Trademark Office, Facsimile No. 703-872-9306.

By: 
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